

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 1039

SAMUEL C. BRODY, PETITIONER

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FIRST CIRCUIT*

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The basic question in this case is whether the taxpayer's refusal to answer the questions contained in the District Court's order of January 10, 1956, was justified in the particular circumstances of the case. The critical facts, as found by the District Court after a full hearing and as reviewed in detail by the Court of Appeals, are as follows: The order of January 10 was entered by the court at a proceeding at which petitioner's counsel entered a general appearance; the order was approved by petitioner's counsel (Pet. 25). Petitioner discussed with counsel the possibility of asserting his privilege under the Fifth

Amendment and affirmatively decided not to assert it (Pet. 38). Petitioner did not claim the privilege when the order of January 10 was entered, nor when he refused to comply with it, nor when he was ordered to show cause why he should not be held in contempt (Pet. 35-37). On the contrary, at the latter time petitioner explained to the court that his deliberate refusal to provide the requested information was so that he would be in a better bargaining position to negotiate a compromise of his tax liabilities (R. 10). The court found as a fact that his failure to comply with the order of January 10 had nothing whatever to do with an apprehension that answers to the questions might involve him in self-incrimination (R. 28). These findings have been considered by the two courts, and are fully supported by the record.

In the light of these facts, petitioner is thus asserting that his refusal, for reasons of possible personal advantage, to comply with a valid court order to which his counsel consented was nevertheless justified because of the existence of his Fifth Amendment privilege. The short answer is, however, that he did not assert the privilege at any relevant time and it had nothing whatever to do with his refusal. On the facts here, the so-called questions of law raised by petitioner are not presented.

There is no merit in petitioner's contention that he was afforded no opportunity to invoke his privilege. His counsel was present in court when the order of January 10 was entered, and agreed to it. During

the entire five months' period in which the order was outstanding, petitioner at no time nor in any way suggested that he wished to invoke the Fifth Amendment. When ordered to show cause why he should not be held in contempt he answered, but again made no allusion to the Fifth Amendment. Finally, the contempt proceeding was reopened so that petitioner could assert his claimed privilege. At this stage, the least petitioner would be required to show was that his refusal to comply was because of the Fifth Amendment privilege. This he was unable to do, the facts being to the contrary.

There is no conflict, nor is any asserted. The decision below is correct, and further review is not warranted. The petition for a writ of certiorari should be denied.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

JUNE 1957.